

The definition of a “retailer maintaining a place of business in Illinois” is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL.)

September 22, 2004

Dear Xxxxx:

This letter is in response to your letter dated May 6, 2004 and received by our office on June 11, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am having a dispute in STATE with a company called ABC. Most of the dispute revolves around the printer and whether the 65% on the memory in the machine is unavailable is fully disclosed to the consumer. That dispute is being investigated by the Attorney General in STATE and his staff.

In doing my research about ABC, In September 2003 and on 5/4/2004, I went to WEBSITE to look into the purchase of a laptop especially. After pricing the laptop, I noticed that ABC doesn't charge sales tax on transactions from STATE residents. I noticed that ABC/XYZ only collects sales taxes on STATE and STATE residents. I started to look into this matter and started to wonder why ABC fails to collect sales tax on other states.

So the questions that I have for you are as follows:

1. As of 5/3/03, XYZ was merged into ABC. Prior to at date, was XYZ a domestic or foreign corporation in your state?
2. Did XYZ have sales reps located in your state? I know in STATE, there were some local sales reps.
3. Did XYZ establish a nexus relation so sales in your state were XYZ needed to collect sales tax?
4. Did XYZ collect sales tax?

5. Did XYZ collect sales tax on sales created on their on-line store?
6. After 5/3/02, is ABC a domestic or foreign corporation in your state?
7. Does ABC need to be registered in your state to do business?
8. Did they transfer or merge the foreign corporation from XYZ?
9. Does ABC have sales reps in your state at the present time?
10. Does ABC rent/lease property in your state?
11. Does ABC sell computer equipment, services and financing to state, local government and educational units in your state?
12. Does ABC need to be registered in your state to state, local government and educational units?
13. If ABC doesn't need to be registered to do business in your state, isn't that a disadvantage to the local vendors who are registered to do business with governmental agencies?
14. Has your state issued any private tax rulings that exempt ABC from registering with your tax authorities?
15. How does your state define "substantial nexus"?
16. If I were a resident of your state, would I be required to pay sales tax on a purchased made on-line at [WEBSITE](#) for a ABC or XYZ computer?
17. If not, why? Does ABC/XYZ report their sales to your state so your state can collect use tax?
18. How does this registration or lack of registration affect the including of sales tax in lease payments? Does ABC collect and remit sales on the lease payments from the residents of your state? I know that BUSINESS collects sales taxes from STATE residents on leases.
19. Is BUSINESS registered in your state as domestic or foreign corporation?
20. If BUSINESS is registered in your state as foreign or domestic corporation, why isn't ABC? I can't see the difference between BUSINESS and ABC in the sale of computers, accessories, services and credit. If BUSINESS is registered and collects sales taxes on in state sales, why isn't ABC?
21. The only difference that I can see between BUSINESS and ABC is that in some states, BUSINESS may have a physical store and ABC doesn't. ABC and BUSINESS have physical presence to (1) make sales presentations and (2) may install and service their products. Both companies have organizations also to sell consulting services
22. If XYZ/ABC hasn't collected sales taxes on on-line sales, what is the statue of limitations on those purchases? I presume that the local sales reps list the sales tax when the resident in your state complete a purchase order.
23. What I can't understand is why the XYZ is still an active foreign corporation is some states? Is that an ABC problem or a problem with the ABC registering agent? .

I figure that ABC is registered in STATES so they must collect sales tax. STATE is easy as it the home state of the corporation. Since ABC is registered a corporation in STATE, I wonder why they don't collect sales for their residents? They even purchased a company called NAME in STATE. Yet no taxes collected for that state.

I don't feel that residents of your state should be liable for the inability of ABC and XYZ refusal to collect sales tax for the years that they should have.

What is the finder's fee for reporting this fact to your state? 25% of all the tax collected would be nice!

I hope that your state can collect more sales tax with these information/questions?

## DEPARTMENT'S RESPONSE:

The confidentiality provisions in the Retailers' Occupation Tax Act, 35 ILCS 120/11, prohibit us from disclosing information contained on the sales tax return of a business. It is a criminal offense to disclose this information to you. We have passed your concerns along to the appropriate personnel within the Department.

Determinations regarding the subject of nexus are normally very fact specific. The Department has found that the best manner to determine nexus is for a Department auditor to examine all relevant facts and information. The following guidelines, however, may be useful to you.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax law. The Supreme Court has set out a two prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis will trigger Use Tax collection responsibilities. See *Brown's Furniture, Inc. v. Wagner*, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and the customer must remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If

you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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